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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,904	01/29/2001	Lorin R. Debonte	07148-063003 / A15-505.35	7898

7590 09/27/2002  
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EXAMINER

MCELWAIN, ELIZABETH F

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 09/27/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/771,904	Applicant(s) DEBONTE ET AL.	
	Examiner Elizabeth McElwain	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-14, 16-19, 26, 28-30 and 35-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-9, 11-14, 16-19, 26, 28-30 and 35-46 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

The preliminary amendments filed January 29, 2001; January 24, 2002 and May 18, 2002 have been entered.

Claims 35-46 were newly submitted.

Claims 1, 3, 4, 6, 7, 11, 12, 16, 18, 26, 28, 30, 44 and 45 have been newly amended.

5 Claims 10, 15, 20-25, 27, 31, 32-34 and 43 have been cancelled.

Claims 1-9, 11-14, 16-19, 26, 28-30, 35-42, and 44-46 are pending.

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3, drawn to a nucleic acid fragment of a delta-12 desaturase, classified  
10 in class 536, subclass 23.1, for example.
- II. Claims 4-6, drawn to a nucleic acid fragment of a delta-15 desaturase, classified  
in class 536, subclass 23.1, for example.
- III. Claims 7, 8 and 11 f), to the extent that the claims are drawn to a nucleic acid  
sequence of SEQ ID NO: 12, classified in class 536, subclass 23.1, for  
15 example.
- IV. Claims 7, 9 and 11 f), to the extent that the claims are drawn to a nucleic acid  
sequence of SEQ ID NO: 16, classified in class 536, subclass 23.1, for  
example.
- V. Claims 11 a), 11 c) and 35, to the extent that the claims are drawn to a nucleic  
20 acid sequence of SEQ ID NO: 11, classified in class 536, subclass 23.1, for  
example.

VI. Claims 11 b), 11 d) and 36, to the extent that the claims are drawn to a nucleic acid sequence of SEQ ID NO: 15, classified in class 536, subclass 23.1, for example.

VII. Claims 12 and 13, to the extent that the claims are drawn to a polypeptide having the sequence of SEQ ID NO: 12, classified in class 530, subclass 370, for example.

VIII. Claims 12 and 14, to the extent that the claims are drawn to a polypeptide having the sequence of SEQ ID NO: 16, classified in class 530, subclass 370, for example.

IX. Claims 16-19 and 37-40, to the extent that the claims are drawn to a Brassicaceae plant having two delta-12 desaturase mutations, classified in class 800, subclass 306, for example.

X. Claims 16-19, drawn to to the extent that the claims are drawn to a Helianthus plant having two delta-12 desaturase mutations, classified in class 800, subclass 322, for example.

XI. Claims 26, 29 and 41<sup>42</sup>, drawn to a method for producing a plant line mutagenized in a delta-12 fatty acid desaturase gene, classified in class 800, subclass 270, for example.

XII. Claims 28, 44 and 45, drawn to a method for producing a plant line mutagenized in a delta-12 fatty acid desaturase gene and a delta-15 fatty acid desaturase gene, classified in class 800, subclass 270, for example.

XIII. Claims 30 and 46, a method for producing a plant line mutagenized in two delta-12 fatty acid desaturase genes, classified in class 800, subclass 270, for example.

The inventions are distinct, each from the other because:

5 Applicants are reminded that nucleotide sequences encoding different proteins are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to normally constitute **independent and distinct** inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 10 35 U.S.C. 121 and 37 CFR 1.141 et seq.

The inventions of Groups I-XIII are distinct products and methods, wherein one is not required by any of the others. The inventions of each of Groups I-X are each distinct products that differ chemically, structurally and functionally. The nucleic acids of Groups I-VI are not required by the polypeptides of Groups VII and VIII, which can be made by another 15 method, such as by chemical synthesis or extraction. In addition, the plants of Groups IX and X do not require the nucleic acids or proteins of Groups I-VIII, since they are made by mutagenesis, not requiring nucleic acids for transformation or isolated polypeptides. Also, the plants of Groups IX and X are distinct plant species that would be made independently through mutagenesis, one not being required by the other. Furthermore, the methods 20 of Groups XI-XIII are distinct one from each of the others in that each requires different method steps and results in different products. In addition, the methods of Groups XI-XIII are

distinct from each of the products of Groups I-X, given that the methods do not require any of the nucleic acids or polypeptides of Groups I-VIII, and the plants of Groups IX and X can each be made by different methods, such as by transformation with mutated genes. Therefore, each of the claimed inventions are capable of being separately made, independently made and the  
5 patentability of one does not render the others obvious or unpatentable.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, their recognized divergent subject matter, and the requirement for different areas of search, restriction for examination  
10 purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

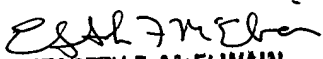
Applicant is reminded that upon the cancellation of claims to a non-elected invention,  
15 the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (703) 308-1794. The examiner can normally be reached on Tuesday through Friday from 7:30 AM to 5:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (703) 306-3218. The fax phone number for this Group is (703) 308-4242. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989).

Any inquiry of a general nature or relating to the status of this application should be directed to the legal analyst, Gwendolyn Payne, whose telephone number is (703) 305-2475, or to the Group receptionist whose telephone number is (703) 308-0196.

Elizabeth F. McElwain, Ph.D.  
September 25, 2002

  
ELIZABETH F. McELWAIN  
PRIMARY EXAMINER  
GROUP 1600